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September 22, 2006

Ms. Blanca Bayo, Director  
Division of Commission Clerk and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

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COMMISSION  
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RE: Florida Public Service Commission Docket No. 060512-EU

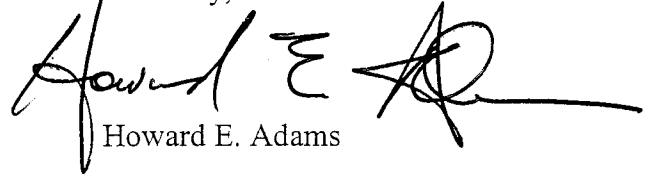
Dear Ms. Bayo:

Enclosed for filing in the above docket is the original and fifteen copies of Response Comments to Rule Comments and Testimony.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning the same to me.

Thank you for your assistance in this matter.

Sincerely,

  
Howard E. Adams

CMP \_\_\_\_\_  
COM \_\_\_\_\_  
CTR HEA/jnb  
ECR Enclosures, as stated.  
GCL \_\_\_\_\_  
OPC \_\_\_\_\_  
RCA \_\_\_\_\_  
SCR \_\_\_\_\_  
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed Adoption of New Rule )  
25-6.0343, F.A.C., Standards of ) DOCKET NO. 060512-EU  
Construction - Municipal Electric Utilities ) FILED: September 22, 2006  
And Rural Electric Cooperatives. )

**RESPONSE COMMENTS TO RULE COMMENTS AND TESTIMONY**

COMES NOW Time Warner Telecom of Florida, L.P., as an affected party and files this its RESPONSE COMMENTS TO THE RULE COMMENTS AND TESTIMONY filed by the affected parties in the above styled docket and would show the following:

**GENERAL COMMENTS**

1. Time Warner Telecom of Florida, L.P. is a competitive local exchange carrier providing telecommunications service in the State of Florida.
2. The name, address and telephone number of Time Warner Telecom of Florida, L.P., and the provider of these comments and testimony is:

Carolyn Marek  
Vice President of Governmental Affairs  
Time Warner Telecom of Florida, L.P.  
233 Bramerton Court  
Franklin, Tennessee 37069  
email: [Carolyn.Marek@twtelecom.com](mailto:Carolyn.Marek@twtelecom.com)  
phone: (615) 376-6404

3. Time Warner Telecom has previously furnished written comments regarding proposed rules on pole attachments on September 8, 2006 for those rules applicable to municipal and rural electric cooperative utilities.
4. Time Warner Telecom filed written comments in this docket after the bifurcation of the dockets for municipal and cooperative utilities. Time Warner understood that negotiations were ongoing for development of a rule that recognized the differing

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jurisdictional issues of rules dealing with the municipal and rural electric cooperative utilities.

5. Time Warner Telecom has reviewed the comments filed by the Florida Municipal Electric Association and the Florida Electric Cooperatives Association, Inc. regarding the rule. Time Warner has also reviewed the proposed supplemental comments and the Motion for Leave To File Supplemental Comments to the Proposed Rule, 25-6.0343. Time Warner has no objection to the motion for leave to file the supplemental comments.

6. Time Warner Telecom addresses these Response Comments to the Proposed Draft Rule developed by the municipal utilities, rural electric cooperatives and staff. Time Warner Telecom continues to suggest additional language is inserted in the proposed draft rule as shown in previously filed comments and the version of the annotated rule attached thereto as Exhibit 1. That Exhibit provided that the utilities and its customers shall bear any increased costs in the relocation, expansion, rebuilding or relocation of electric distribution facilities. This language would help to insure that such costs are not unfairly apportioned or burdened on third party attachers.

7. Time Warner Telecom is concerned with the newly proposed draft rule with regard to suggestions that the commission only receive reports regarding the application of the utilities standards of construction designed to implement the National Electrical Safety Code (NESC). The rule still requires compliance “at a minimum” with the NESC codes. Time Warner Telecom renews its concern that this language allows “over engineering” in excess of the standards which if used improperly and applied to third party attachers could “regulate off the poles” any third-party attachments. Time Warner Telecom suggests striking the “minimum” language in the portions of the rule which would then provide that the adoption

of the National Electric Safety Code safety standards would become the uniform standard for compliance. This uniform standard would ensure that each utility in its implementation would not exceed the minimum requirements to such an extent that local implementation standards, engineering practices or local safety standards would prevent an attacher from being allowed to attach to the pole. The uniform standard would also prevent the utility from implementing locally discriminatory practices or imposing additional unwarranted costs to the attachers. Time Warner Telecom would be at a distinct disadvantage if the utilities utilized these standards to either transfer costs or used these standards to “regulate” attachers on the poles so that no further attachments would be allowed because of wind loading concerns. Time Warner Telecom as a competitive carrier would be economically and competitively unable to compete if these costs were imposed on it.

8. Time Warner Telecom agrees with the Comments of the Rural Electric Cooperative Association that while street side or front street locations for utility facility siting are desirable, much more flexibility is needed in rural areas as a cost savings measure. While that language regarding front street locations is deleted from the proposed jointly developed proposed rule, Time Warner agrees with the rural electric cooperatives that the language should remain stricken. As long as adequate access for repair in emergencies is maintained, there should not be a required “front of lot” access requirement.

9. Time Warner Telecom states that it has concerns that no mechanism for dispute resolution is provided in the proposed amended rule as negotiated by staff and the utilities. The municipal electric association suggests that contractual rights through the courts and forums in front of public bodies provide an ample dispute forum for resolution of problems for pole attachers. Time Warner however asserts that those forums are neither quick nor

inexpensive avenues of resolution and suggests the commission continue to seek ways to arbitrate or provide an alternative forum other than the courts where disputes could be resolved. A forum through the Commission with its expertise, its staff knowledge of the NESC standards and its resources could resolve disputes without years of protracted litigation over pole attachments or design and attachment policies. Use of the Commission's interconnection jurisdiction or as staff had suggested, the use of a modified customer complaint process could resolve issues quickly and without costly court litigation.

10. Time Warner Telecom states that the rules should also allow for input by affected pole attachers into the development and use of the standards for wind loading and pole attachment standards by the utilities. Such input would be valuable and draw upon the expertise of the attachers as to needs, experience and standards with pole attachments. The rule does not state that the utility shall seek input from pole attachers or other entities and it does not provide that such input shall be reviewed and utilized in establishing the construction standards. The jurisdiction to resolve any disputes arising from the implementation of the standards could take years without a speedy and appropriate process and forum. The untimely resolution of disputes could favor the cooperatives and municipalities with each having its own standards and no readily available forum for the resolution of disputes over these standards.

11. Finally, the rule should provide a clear statement that the application of the standards to be developed regarding safety, engineering standards and procedures for attachments should not be used in a manner to discriminate against third party attachers. A statement in the rule clarifying this intent would help to prevent misapplication of the rule in

the future and help to thwart any intentional use of the standards to harm or prevent third party attachments.

**COMMENTS ON PROPOSED RULE AS DRAFTED BY STAFF AND UTILITIES**

12. Rule 25-6.0343 – The following changes are suggested: A new sentence is added as a new paragraph (6) to provide:

(6) “The construction standards provided in this rule shall not act to impair, restrict, impede, or discriminate against third-party attachers from attaching to poles where such attachments do not violate the safety standards of the applicable National Electric Safety Code.”

13. In Paragraph (3)(a) the words and punctuation “,at a minimum,” shall be stricken.

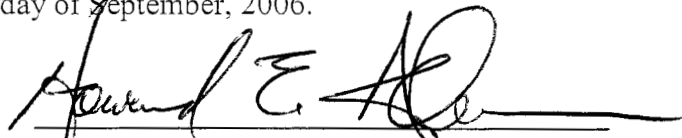
14. A new Paragraph (7) is created to provide:

(7) “Any additional costs for expansion, rebuilding or relocation of the electric distribution facility shall be born by the utility or the customer as provided by the contribution in aid of construction or other appropriate cost recovery mechanisms. “

**CONCLUSION**

Time Warner Telecom respectfully requests that the Florida Public Service Commission make the amendments to the rule as proposed in these pleadings and as provided in the attached copy of the rule showing the changes to be made and with additions noted. Time Warner Telecom asks that it be allowed to present these comments and testimony and that it be allowed to participate fully in the hearing as an affected party and to present further argument and oral statements on the proposed rules as may be necessary.

Respectfully submitted this 22<sup>nd</sup> day of September, 2006.

  
HOWARD E. ADAMS  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by  
U.S. Mail this 22<sup>nd</sup> day of September 2006 to the following:

  
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**ATTACHMENT A**  
**FECA'S ALTERNATIVE RULE**

25-6.0343 Municipal Electric Utility and Rural Electric Cooperative Reporting Requirements

(1) Application and Scope. The purpose of this rule is to define certain reporting requirements by municipal electric utilities and rural electric cooperatives providing distribution service to end-use customers in Florida.

(2) The reports required by sections (3), (4), and (5) of this rule shall be filed with the Director of the Division of Economic Regulation by March 1 of each year for the preceding calendar year.

(3) Standards of Construction. Each municipal electric utility and rural electric cooperative shall report the extent to which its construction standards, policies, practices, and procedures are designed to storm harden the transmission and distribution facilities. Each utility report shall, at a minimum, address the extent to which its construction standards, policies, guidelines, practices, and procedures:

(a) Comply, ~~at a minimum,~~ with the applicable edition of the National Electrical Safety Code (ANSI (2-2) WESC).

(b) Are guided by the extreme wind loading standards specified by Figure 250-2(d) of the 2002 edition of the NESC for:

1. new construction;
2. major planned work, including expansion, rebuild, or relocation of existing facilities, assigned on or after the effective date of this rule; and
3. targeted critical infrastructure facilities and major thoroughfares taking into account political and geographical boundaries and other applicable operational considerations.

(c) Address the effects of flooding and storm surges on underground distribution facilities and supporting overhead facilities.

(d) Provide for placement of new and replacement distribution facilities so as to facilitate safe and efficient access for installation and maintenance.

(e) Include written safety, pole reliability, pole loading capacity, and engineering standards and procedures for attachments by others to the utility's electric transmission and distribution poles.

(4) Facility Inspections. Each municipal electric utility and rural electric cooperative shall report, at a minimum, the following information pertaining to its transmission and distribution facilities:

(a) A description of the utility's policies, guidelines, practices, and procedures for inspecting transmission and distribution lines, poles, and structures including, but not limited to, pole inspection cycles and pole selection process.

(b) The number and percentage of transmission and distribution inspections planned and completed.

(c) The number and percentage of transmission poles and structures and distribution poles failing inspection and the reason for the failure.

(d) The number and percentage of transmission poles and structures and distribution poles, by pole type and class of structure, replaced or for which remediation was taken after inspection, including a description of the remediation taken.

(5) Vegetation Management. Each municipal electric utility and rural electric cooperative shall report, at a minimum, the following information pertaining to the utility's vegetation management efforts:

(a) A description of the utility's policies, guidelines, practices, and procedures for vegetation management, including programs addressing appropriate planting, landscaping, and problem tree removal practices for vegetation management outside of road right-of-ways or easements, and an explanation as to why the utility believes its vegetation management practices are sufficient.

(b) The quantity, level, and scope of vegetation management planned and completed for transmission and distribution facilities.

(6) The construction standards provided in this rule shall not act to impair, restrict, impede, or discriminate against third-party attachers from attaching to poles where such attachments do not violate the safety standards of the applicable National Electric Safety Code.

(7) Any additional costs for expansion, rebuilding or relocation of the electric distribution facility shall be born by the utility or the customer as provided by the contribution in aid of construction or other appropriate cost recovery mechanisms.

Specific Authority: 350.127(2), 366.05(1) FS.

Law Implemented: 366.04(2)(f), 366.04(6) FS.

History New \_\_\_\_\_.